



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/172796

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Department of Health Services, Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on April 20, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services / The Management Group correctly denied the Petitioner's request for coverage of a utility set-up and security deposit for a new residence.

NOTE: The record was held open until April 22, 2016, to give The Management Group (TMG) an opportunity to submit a copy of Petitioner's Individual Support and Service Plan. It has been marked as Exhibit 5 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] Associate Director, TMG
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner's Individual Support and Services Plan for July 24, 2015 to June 30, 2016, list the following desired outcomes:
 - a. "I want to be a member of the Experience Fitness Center"
 - b. "I would like to have control over my transportation"
 - c. "I would like help with household chores"

(Exhibit 4)

3. On an unspecified date the Petitioner asked the Wisconsin IRIS program to cover expenses for moving from the home she shares with her ex-husband. (Exhibit F1)
4. On December 23, 2015, Wisconsin IRIS denied the request and Petitioner subsequently filed an appeal in case CWA/171005. (Exhibit F1)
5. On an unspecified date the Petitioner asked Wisconsin IRIS to cover the cost of setting up utilities and a security deposit for a new residence. (Exhibit 1; Exhibit B2)
6. On March 8, 2016, Wisconsin IRIS sent the Petitioner a notice advising her that it was denying her request for coverage of the utilities set and security deposit. (Exhibit 1; Exhibit B2)
7. On March 15, 2016, the Petitioner filed an appeal of the March 8, 2016 denial, which is the subject of the instant appeal. (Exhibit 1)
8. On March 28, 2016, the Division of Hearings and Appeals issued a decision in case CWA/171005 concluding that the Petitioner was not eligible for coverage of moving expenses, because she already had an established residence in the community. (Exhibit F1)
9. Petitioner currently lives in a duplex co-owned with her ex-husband. The Petitioner lives in the lower unit and her ex-husband lives in the upper unit. (Testimony of Petitioner)
10. The mortgage and utilities for the duplex are to be split between the Petitioner and her ex-husband, but her ex-husband has not reimbursed her for his share of the expenses. (Testimony of Petitioner)
11. Petitioner has keys to the residence. (Testimony of Petitioner)

DISCUSSION

The Petitioner has been receiving medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

The petitioner receives medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

The IRIS program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.

- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

When determining whether a service is necessary, the Division must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6. and 7.

In furtherance of implementing these laws, the IRIS program has developed various policies regarding funding of goods and services. These policies are found in the IRIS Policy Manual¹, the IRIS Service Definition Manual², the IRIS Policy Manual:Work Instructions³, and the Application for a §1915(c) Home and Community Based Services Waiver (WI.0484.R01.06)⁴.

Page 54 of the IRIS Service Definition Manual states the following:

Relocation-related services may be funded by IRIS as a last payment resource when other sources are exhausted. Relocation-related services include the provision of services and essential items needed to establish a community living arrangement for persons relocating from an institution, a residential setting, or for people moving out of a home controlled by another individual, with intent to establish an independent living arrangement...”

It is undisputed that payment of a security deposit and set up costs for utilities are relocation related services.

The decision issued by the Division of Hearings and Appeals in case CWA/171005 found that Petitioner was not entitled to coverage of her moving expenses / relocation related costs because she was not relocating from an institution, a residential setting or moving out of a home controlled by another individual. I have no authority to reverse that finding and must find that Petitioner is not entitled to coverage of a security deposit and costs for setting up utilities. If Petitioner disagreed with the decision in case CWA/171005, she needed to file an appeal with the circuit court.

Even if I could reverse the holding in CWA/171005, I would not.

¹ The IRIS Policy Manual can be found on-line at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>

² The IRIS Service Definition Manual can be found at <https://www.dhs.wisconsin.gov/publications/p00708b.pdf>

³ The IRIS Policy Manual: Work Instructions can be found at:
<https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf>

All manuals can also be accessed through the TMG website: <http://www.tmgwisconsin.com/iris-consultant-agency-ica/program-materials-and-forms/>

⁴ The application for HCBS Waiver can be found on-line at: <https://www.dhs.wisconsin.gov/iris/hcbw.pdf>. Portions of the application are included in Exhibit C1-C2.

First, there is no evidence that the Petitioner has exhausted all other funding sources.

Second, it is undisputed that the Petitioner is not relocating from an institution. The Wisconsin Medicaid Manual at §27.1.1 defines “institution” to mean a medical institution, which in turn can be, but is not limited to skilled nursing facilities, intermediate care facilities, institutions for mental disease and hospitals. Petitioner is relocating from duplex that she owns.

Third, Petitioner is not relocating from a home controlled by another. She has an equal interest in the duplex where she resides. She lives in her own unit within the duplex. She pays the bills for the duplex and she has keys to the duplex and so, cannot be locked out if she keeps her keys with her. While the Petitioner cannot control the behavior of her ex-husband, she exercises a great deal of control over her home.

Finally, the Petitioner is not relocating from a residential setting, such as an Adult Family Home (AFH), A Community Based Residential Facility (CBRF) or a Residential Care Apartment Complex (RCAC).

The Petitioner and TMG already litigated, in case CWA/171005, what the IRIS Service Definition Manual meant by relocating from a “residential setting”. Petitioner argued that it meant any residence in the community; TMG argued that it meant a residence other than an independent living arrangement, such as an AFH, CBRF or RCAC. The issue was decided in CWA/171005 in favor of TMG’s interpretation and cannot be re-litigated here.

CONCLUSIONS OF LAW

The Department of Health Services / The Management Group correctly denied the Petitioner’s request for coverage of a utility set-up and security deposit for a new residence.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

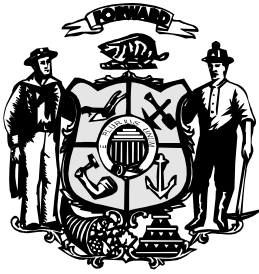
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of May, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 20, 2016.

Bureau of Long-Term Support